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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirtieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the rights of the child: Switzerland

1. The Committee considered the initial report of Switzerland (CRC/C/78/Add.3) at its 790th and 791st meetings (see CRC/C/SR.790 and 791), held on 29 May 2002, and adopted* the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, which followed the established guidelines. The Committee also takes note of the timely submission of the written replies to its list of issues (CRC/C/Q/SWI/1), which allowed for a clearer understanding of the situation of children in the State party. The Committee also notes the positive dialogue it had with the delegation of the State party. The Committee acknowledges that the presence of a highly qualified delegation directly involved in the implementation of the Convention allowed for a better understanding of the rights of children in the State party.

* At the 804th meeting, held on 7 June 2002.

B. Positive aspects

3. The Committee welcomes the adoption of:

(a) The new Constitution of 1999 which enshrines provisions on the rights of the child, notably in its article 11;

(b) The new Act on divorce and filiation (entered into force in 2000);

(c) The amendments to the Penal Code which introduce the prohibition of possession of hard-core pornography, including child pornography (entered into force in 2002);

(d) The revision of the Federal Act concerning Assistance to Victims of Offences (entered into force in 2002);

(e) The Act on Medically Assisted Procreation (entered into force in 2001).

4. The Committee also welcomes the fact that the Convention can be directly invoked before the courts and that the Federal Tribunal has referred to the provisions and principles of the Convention on several occasions.

5. The Committee welcomes the State party's close cooperation with civil society with regard to children's rights.

C. Principal subjects of concern and recommendations

1. General measures of implementation

Reservations

6. The Committee is concerned at the reservations made by the State party to articles 5, 7, 10 and 37 and the four reservations made with regard to article 40, but welcomes the information that the State party is considering the withdrawal of most of these reservations thanks to recent and current revisions of the Constitution and other relevant laws, following a tentative timetable presented during the dialogue. Despite this information, the Committee remains concerned at the rather slow pace of this withdrawal process and even more at the fact that some reservations may not be withdrawn at all, or only in the distant future.

7. **In light of the 1993 Vienna Declaration and Programme of Action, the Committee recommends that the State party:**

(a) Expedite as much as possible the process for the withdrawal of the reservations regarding the provision of an interpreter free of charge (art. 40 (2) (b) (vi)) and use this process to withdraw as soon as possible the reservation to article 5, given the fact that this reservation is, according to the State party, only an interpretative declaration that is not intended to affect the meaning of article 5;

(b) Expedite the current revision of the naturalization law and withdraw as soon as possible after the approval of this revision the reservation made to article 7;

(c) Expedite the current revision of the Foreign Nationals Act (formerly Federal Act concerning the Permanent and Temporary Residence of Foreigners) and withdraw as soon as possible after the approval of the revision the reservation made to article 10, paragraph 1, regarding family reunification;

(d) Expedite the approval and enactment of the new Juvenile Penal Law in order to start as soon as possible thereafter the withdrawal of the reservation to article 40 (2) (b) (ii) regarding legal assistance and to article 37 (c) regarding separation of juveniles deprived of their liberty from adults;

(e) Reconsider the reservation made with regard to the possibility of having the same juvenile judge as an investigating and a sentencing judge since the requirement of an independent and impartial authority or judicial body (art. 40 (2) (b) (iii)) does not necessarily and under all circumstances mean that investigating and sentencing juvenile judges cannot be the same person;

(f) Expedite the current legal reform which abolishes the competence of the Federal Tribunal as a court of first instance and withdraw as soon as possible after approval of that reform the reservation made to article 40 (2) (b) (v).

8. **The Committee urges the State party to complete the withdrawal of all reservations before the submission of the next report.**

Legislation

9. The Committee is aware of the numerous laws under revision in the State party, including in the cantons, which are relevant to children such as the federal bill on criminal procedures applicable to minors, the federal bill on the criminal status of minors, and the Foreign National Act.

10. **The Committee recommends that the State Party:**

(a) Ensure, through an appropriate mechanism, that national and cantonal laws conform with the Convention in order to avoid discrimination which may arise from existing disparities in the State party;

(b) Rigorously review and ensure that these and other laws concerning children as well as administrative regulations, both at the federal and at the cantonal level, are rights based and conform to the Convention and other international human rights instruments and standards;

(c) Ensure that adequate provision is made for their effective implementation, including budgetary allocation; and

(d) Ensure their smooth and rapid promulgation.

Coordination

11. The Committee notes that the Federal Council stipulated in its resolution dated 15 October 1997 that the Federal Department for Home Affairs is responsible for coordinating the implementation of the Convention and that coordinating mechanisms exist between cantons and between the cantons and the Federal Government. However, the Committee remains concerned that the absence of a central mechanism to coordinate the implementation of the Convention in the State party makes it difficult to achieve a comprehensive and coherent child rights policy.

12. **The Committee recommends that the State party establish an adequate permanent national mechanism to coordinate the implementation of the Convention at the federal level, between the federal and the cantonal levels and between cantons.**

13. The Committee notes that the Federal Department of Home Affairs formulated elements of a Swiss policy concerning children and youths, but remains concerned that this policy does not address all the rights of children, especially the younger child, as recognized in the Convention.

14. **The Committee recommends that the State party prepare and implement a comprehensive national plan of action for the implementation of the Convention, undertaken through an open, consultative and participatory process. This national plan of action should adopt a rights-based approach and not be limited to protection and welfare. In addition, the Committee recommends that equal attention should be paid both to young and older children. Finally, the Committee recommends that the State party make use of child-impact assessments in the formulation of legislation, budgets and policies.**

Monitoring structures

15. The Committee notes the establishment of mediators in a number of cantons and of mechanisms specialized in children's issues in a number of cantons and cities. The Committee also notes that there have been a number of parliamentary motions for the establishment of a federal national human rights institution. However, the Committee is concerned that there is no central independent mechanism to monitor the implementation of the Convention and which is empowered to receive and address individual complaints of children at the cantonal and federal levels.

16. **The Committee recommends that the State party establish a federal independent human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134) to monitor and evaluate progress in the implementation of the**

Convention. It should be accessible to children, empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner, and address them effectively.

Data collection

17. The Committee notes the measures under way to improve data collection, notably through the National Research Programme. However, the Committee remains concerned that age-brackets used by statistics - notably the national census - do not conform to the definition of the child as set out in the Convention and that not all areas of the Convention are covered.

18. **The Committee recommends that the State party collect disaggregated data on all persons under 18 years for all areas of the Convention, with specific emphasis on those who are particularly vulnerable and on fields which are not yet covered by current data, and use this data to assess progress and design policies to implement the Convention.**

Training/dissemination of the Convention

19. The Committee welcomes information that the State party will publish its initial report with the concluding observations, together with a summary of the report. However, the Committee is concerned that the Convention has not been translated into the fourth national language of the State party, namely Romansh, and that dissemination, awareness-raising and training activities are not always undertaken in a systematic and targeted manner.

20. **The Committee recommends that the State party:**

(a) Strengthen and continue its programme for the dissemination of information on the Convention and its implementation among children and parents, civil society, and all sectors and levels of Government, including initiatives to reach vulnerable groups, especially migrant and asylum-seeking children;

(b) Translate the Convention into Romansh;

(c) Develop and disseminate systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. federal and cantonal parliamentarians, judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel).

2. General principles

Non-discrimination

21. While acknowledging the prohibition of discrimination in the Constitution (art. 8), the Committee is concerned at the de facto discrimination against foreign children and at incidents

of racial hatred and xenophobia that can have a negative effect on the development of children. The Committee is also concerned that some of the cantonal disparities in practices and services provided and in the enjoyment of rights by children may amount to discrimination.

22. **In light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative measures to prevent and eliminate de facto discrimination against foreign children or children belonging to minorities.**

23. The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow-up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1 (aims of education).

Best interests of the child

24. The Committee is concerned that the general principle of the best interests of the child (art. 3) is not fully applied and duly integrated in the implementation of the policies and programmes of the State party.

25. **The Committee recommends that the State party take all appropriate measures to ensure that the general principle of the best interests of the child is appropriately integrated in all legislation and budgets, as well as judicial and administrative decisions and in projects, programmes and services which have an impact on children.**

Respect for the views of the child

26. While welcoming article 11, paragraph 2, of the Constitution recognizing that the child can exercise his/her own rights in accordance with his/her maturity and the numerous legal provisions recognizing the right of the child to express his/her views, and noting the establishment of various Youth Parliaments at the cantonal or municipal levels, the Committee is still concerned that the general principle as laid down in article 12 of the Convention is not fully applied and duly integrated in practice into the implementation of the policies and programmes of the State party.

27. **The Committee recommends that further efforts be made to ensure the implementation of the principle of respect for the views of the child. In this connection, particular emphasis should be placed on the right of every child to participate in the family, at school, within other institutions and bodies, and in society at large, with special attention to vulnerable groups. This general principle should also be reflected in all**

policies and programmes relating to children. Awareness-raising among the public at large as well as education and training of professionals on the implementation of this principle should be reinforced.

3. Civil rights and freedoms

The right to know one's identity

28. The Committee notes that, according to article 27 of the Law on Medically Assisted Procreation, a child can be informed of the identity of his/her father only if he/she has a "legitimate interest" and is concerned at the meaning of "legitimate interest" in that regard.

29. **In light of article 7 of the Convention, the Committee recommends that the State party ensure, as far as possible, respect for the child's right to know his or her parents' identities.**

Torture and ill-treatment

30. The Committee is deeply concerned about allegations of instances of ill-treatment by law enforcement officers against foreign children and at the prevalence of abuse.

31. **The Committee endorses the recommendations made by the Committee against Torture in that regard (A/53/44, para. 94) and, in light of article 37 of the Convention, recommends that the State party:**

(a) Set up child-sensitive mechanisms in all cantons to receive complaints against law-enforcement officers regarding ill-treatment during arrest, questioning and police custody; and

(b) Systematically train the police force on the human rights of children.

Corporal punishment

32. While noting that corporal punishment is prohibited in schools, the Committee is concerned that according to the jurisprudence of the Federal Tribunal, corporal punishment is not considered as physical violence if it does not exceed the level generally accepted by society. In addition, the Committee is concerned that corporal punishment within the family is not prohibited under law.

33. **The Committee recommends that the State party explicitly prohibit all practices of corporal punishment in the family, schools and in institutions and conduct information campaigns targeting, among others, parents, children, law enforcement**

and judicial officials and teachers, explaining children's rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28, paragraph 2.

4. Family environment and alternative care

Childcare services for children of working parents

34. While welcoming a parliamentary initiative to increase the number of childcare facilities, the Committee notes with concern that according to information provided by the State party (CRC/C/78/Add.3, para. 481), the existing offer of childcare services is far from meeting the needs.

35. **In light of article 18, paragraph 3, of the Convention, the Committee recommends that the State party:**

(a) Take measures to establish more childcare services to meet the needs of working parents; and

(b) Ensure that the childcare services provided promote early childhood development, in light of the principles and provisions of the Convention.

Adoption

36. The Committee welcomes the entry into force of article 268 (c) of the Civil Code which will allow adopted children to know their biological parents, and the ratification process, expected to be completed in 2003, of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption of 29 May 1993. However, the Committee remains concerned that children adopted abroad must wait two years before being formally adopted, which can lead to discrimination and statelessness. In addition, the Committee is concerned that, because of the inadequate follow-up, cases of ill-treatment of children by adoptive parents have been reported.

37. **The Committee recommends that the State party take the necessary measures to avoid children adopted abroad becoming stateless or discriminated against because of the time between their arrival in the State party and their formal adoption. In addition, the Committee further suggests that the State party systematically review the conditions of these children by means of an adequate follow-up with a view to eliminating ill-treatment and violations of their rights.**

Abuse and neglect/violence

38. While welcoming the numerous initiatives to tackle violence against children in the family, schools and sports, the Committee remains concerned at the lack of comprehensive data and information on child abuse and/or neglect.

39. **In light of article 19, the Committee recommends that the State party:**

(a) Undertake studies on violence, ill-treatment and abuse against children, especially vulnerable groups of children and, including sexual abuse, particularly within the family, and bullying in schools in order to assess the extent, scope and nature of these practices;

(b) Develop awareness-raising campaigns with the involvement of children in order to prevent and combat child abuse;

(c) Evaluate the work of existing structures and provide training to the professionals involved in these types of cases; and

(d) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse, within the family through a child-sensitive inquiry and judicial procedure, in order to ensure better protection of child victims, including of their right to privacy.

5. Basic health and welfare

Adolescent health

40. While taking into account the advanced health care system, the very low infant mortality rate and the decrease in HIV/AIDS prevalence, the Committee is nevertheless concerned about the high number of suicides among adolescents and the limited measures to prevent this phenomenon, and the insufficient access by adolescents to counselling services, including outside schools. In addition, the Committee is concerned at the high and increasing, prevalence - notably among girls - of alcohol and tobacco use. Moreover, while noting that the fatality rate is decreasing, the Committee is still concerned at the high number of children who die or are injured in road traffic accidents. Finally, the Committee is concerned at cases of female genital mutilation performed abroad.

41. **The Committee recommends that the State party:**

(a) Pursue its efforts to decrease the prevalence of HIV/AIDS and take all necessary measures to prevent suicides among adolescents, including the collection and analysis of information, the launching of awareness-raising campaigns, and the establishment of specific programmes and counselling services;

(b) Increase its efforts to promote adolescent health policies, particularly with respect to alcohol consumption and tobacco use;

(c) Pursue its efforts to decrease the number of child victims of road traffic accidents; and

(d) Develop awareness campaigns targeted at the relevant population to put an end to the practice of female genital mutilation and to conduct a comprehensive study on this issue.

Children with disabilities

42. While welcoming the fact that the Constitution prohibits discrimination on the basis of disability (art. 8), the Committee remains concerned at the lack of statistics regarding children with disabilities and the lack of uniform practices for integrating these children in mainstream education in the various cantons. In addition, the Committee is concerned at the distinction made between children born with disability and children who become disabled as far as home care is concerned (ibid., para. 39).

43. **The Committee recommends that the State party:**

(a) Reinforce the collection of data regarding children with disabilities;

(b) Undertake an assessment of the existing disparities in the integration of disabled children in mainstream education across the country and take all necessary measures to eliminate these differences which may amount to discrimination;

(c) Review its home care support system in order to eliminate de facto discrimination between children born with disability and children who become disabled as a result of disease or an accident.

Health insurance

44. The Committee takes note of the ongoing reform of the social security system but remains concerned that the cost of social insurance and health is very high, which may affect low-income families.

45. **The Committee endorses the concluding observations of the Committee on Economic, Social, and Cultural Rights (E/C.12/1/Add.30, para. 36) and recommends that the State party review its health insurance systems in order to lower the cost of health services, for example, by reducing premiums.**

Standard of living/social welfare

46. While noting the economic wealth and high standard of living in the State party, the Committee is concerned that 5.6 per cent of the population is affected by poverty, and that, according to information provided by the State party (Eléments d'une politique suisse de l'enfance et de la jeunesse), young families, single-parent families and families with many children are the most affected. In addition, the Committee is concerned that the family allowances or benefits vary according to canton and depend on the recipient's being gainfully employed.

47. **The Committee recommends that the State party take all appropriate measures to prevent poverty in light of the principles and provisions of the Convention, especially its articles 2, 3, 6, 26 and 27, and that it review its system of family allowances and benefits, taking due account of the means-testing system, especially for families without gainful employment and self-employed families.**

6. Education

48. The Committee is concerned at the lack of information about how the aims of education, especially human rights education, are reflected in the school curricula in all the cantons of the State party, in light of article 29 of the Convention and the Committee's general comment No. 1 on the aims of education.

49. **The Committee recommends that the State party provide information in its next report on how the aims of education have been reflected in the curricula at the cantonal level.**

7. Special protection measures

Refugee, asylum-seeking and unaccompanied children

50. While welcoming the entry into force of the federal asylum legislation (Federal Asylum Act and Ordinance 1 on Asylum Procedure) on 1 October 1999, the Committee remains concerned that the procedure used for unaccompanied minors is not always in their best interests nor fully in line with relevant provisions of the Convention. In addition, in relation to the reservation made to article 10 of the Convention, the Committee is concerned that the right to family reunification is too restricted.

51. **The Committee recommends that the State party simplify its approach regarding the procedures for requesting asylum and take all necessary measures to expedite them and to ensure they take into account the special needs and requirements of children, in particular unaccompanied children; these include the designation of a legal representative, the placement of such children in centres, and their access to health care and education. In addition, the Committee recommends that the State party review its system for family reunification, notably for refugees who stay for a long period in the State party.**

Sexual exploitation and sexual abuse

52. While welcoming the amendments to the Penal Code prohibiting the possession of hard-core pornography, including child pornography, and the establishment of a new centre against cyber-crime in 2003, the Committee remains concerned at the lack of knowledge about the extent of sexual exploitation of children, in particular vulnerable groups, in the State party.

53. **In light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake studies with a view to assessing the extent of sexual exploitation and trafficking of children, including prostitution and child pornography (including on the Internet), and implement appropriate policies and**

programmes for prevention and for the recovery and social reintegration of child victims, in accordance with the 1996 Declaration and Agenda for Action and the 2001 Global Commitment adopted at the World Congresses against Commercial Sexual Exploitation of Children.

Drug abuse

54. While noting the current policy of the State party to prevent and fight drug use by adolescents, the Committee is concerned at the increasing use and sale of illegal drugs among adolescents.

55. **The Committee recommends that the State party pursue its awareness-raising and preventive measures, including awareness raising of the danger of drugs in schools. It further recommends that the State party allocate more resources to the child welfare service system for prevention, treatment therapies and services for recovery and social reintegration specifically tailored for children and adolescents.**

Administration of juvenile justice

56. The Committee welcomes the ongoing discussion on the federal bill on the criminal status of minors, the federal bill on criminal procedures applicable to minors and on the amendment to the Federal Act concerning Judicial Organization, but remains concerned at the very low age of criminal responsibility (7 years) and considers that the new proposed age of criminal responsibility, namely 10 years, is still too low. In addition, the Committee is concerned at the lack of provisions regarding legal assistance during pre-trial detention in some cantons and at the failure to separate children from adults in pre-trial detention and imprisonment.

57. **The Committee recommends that the State party take additional steps to reform legislation and the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.**

58. **As part of this reform, the Committee particularly recommends that the State party:**

(a) Raise the minimum age for criminal responsibility to above 10 years and amend accordingly the federal bill on the criminal status of minors;

(b) Systematize the provision of legal assistance to all children in pre-trial detention;

(c) Separate children from adults in pre-trial detention or detention;

(d) Introduce systematic training programmes on relevant international standards for all professionals involved with the system of juvenile justice;

(e) Take into consideration the deliberations of the Committee during its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238).

Children belonging to a minority group

59. The Committee is concerned at the lack of information on Roma and Travellers and their children in the State party and that there is no policy for these children.

60. **The Committee recommends that the State party undertake a study on children belonging to the Roma and Traveller minorities to assess their situation and develop policies and programmes to prevent social exclusion and discrimination, and to allow these children to fully enjoy their rights, including access to education and health care.**

8. Optional Protocols to the Convention

61. **The Committee encourages the State party to ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.**

9. Dissemination of documentation

62. **Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. In addition, the Committee recommends that the State party also make widely available the summary of the State party report which they have produced. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NGOs.**